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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,990	03/11/2004	Raymond J. Archacki JR.	210_657	5162
20874	7590	09/26/2005	EXAMINER	
WALL MARJAMA & BILINSKI 101 SOUTH SALINA STREET SUITE 400 SYRACUSE, NY 13202			EMDADI, KAMRAN	
			ART UNIT	PAPER NUMBER
			2667	

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/797,990	ARCHACKI, RAYMOND J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kamran Emdadi	2667	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 July 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
     Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

***Response to Arguments***

Applicant's arguments with respect to claims 1, 10 and 15 have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 7-10, and 12 are rejected under 35 U.S.C. 102(e) as being anticipated by Harris (U.S. Patent No. 6,842,461).

Regarding claim 1, Harris teaches a data retransmission system including sending a broadcast message from a base station (BTS) to remote wireless mobile units (MU), then retransmitting the originally broadcast message to only those units requesting retransmission (see abstract and figures 3 and 5-6). The retransmission is performed through a second channel different from the first channel and it is a method different than the first broadcasting method because only those devices that did not receive the original broadcast message (a subset of the original set of devices) are sent the retransmission (see column 1, lines 34-42) and (column 5, lines 26-36), and recording a list of those devices that did not receive the original broadcast message (see column 5, lines 33-36).

Regarding claims 7-9 and 12, Harris teaches a method of indicating the number of users that received a message sent vs. the number of users that did not receive the message and the message is sent via wireless communications (see column 5, lines 30-36).

Regarding claim 10, in addition to the above described features, Harris teaches determining a unique power requirement for each remote device and makes the proper adjustment prior to retransmission (see column 6, lines 55-61).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 15 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris.

Regarding claim 15, in addition to the above described features, Harris does not explicitly teach receiving an acknowledgement message from the mobile users, however, Harris does teach of a negative acknowledgement (NAK) received from the mobile users implying that the receiver does acknowledge not receiving certain data (see column 4, lines 40-45). Therefore, it is implied by the reference that an acknowledgement message is normally transmitted in this particular instance for receiving data correctly. Further, the Examiner takes official notice that in instances

where the NAK is used, the acknowledgment is also used. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have taken the teachings of Harris and arrived at the features recited in claim 15.

Regarding claims 19-20, Harris teaches a method of indicating the number of users that received a message sent vs. the number of users that did not receive the message and the message is sent via wireless communications (see column 5, lines 30-36).

Claims 2-6, 11, 13-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harris in view of Sinclair (U.S. Patent Publication No. 2003/0073461).

Harris does not teach controlling a thermostat via the wireless communications systems disclosed therein. Sinclair, however, discloses a wireless communications system that controls remote devices. The operations of Sinclair explicitly teaches controlling a thermostat, and broadcast communications, similar to the communications systems of Harris (see [0157, 0159 and 0161-0163]). Also, the Internet is used as a medium to control the thermostat remotely (see [0167]).

Motivation to combine Sinclair with Harris is evident from the discussion present in [0169] of Sinclair, which discusses the flexibility of accommodating various types of wireless networking needs. Additionally, Sinclair discloses the desire to provide a backup system of wireless control systems in the event of a power failure, which is a limiting factor in hardwired and land line control systems (see [0007]). The system disclosed in Harris also discloses the desire to have an efficient means for

Art Unit: 2667

communications (see column 1, lines 28-30). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine these two references and arrive at the invention disclosed in claims 2-6, 11, 13-14 and 16-18.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamran Emdadi whose telephone number is 571-272-6047. The examiner can normally be reached on M-F between the hours of 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kamran Emdadi

September 19, 2005

  
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9/23/05